

Bureau of Reclamation, Interior

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discretion of the Regional Director, applications made by other Federal agencies need not be accompanied by either of the above deposits or fees.

(c) All fees and costs may be waived or reduced at the discretion of the Regional Director, when:

(1) It is determined that the applicant for the right-of-use will soon be, or is in the position of granting a right-of-use to the United States, and an opportunity for a reciprocal agreement exists, providing an agreement between Reclamation and the applicant is on file permitting such an exchange of uses.

(2) The initial deposit and the administrative costs would exceed the value of the interests and rights to be granted. The \$50 minimum fee will usually be retained.

(3) The holder provides without charges, or at a reduced charge, a valuable service to the general public or to the programs of the Department of the Interior; or

(4) The right-of-use is a result of a service requested by the Federal Government or a governmental agency.

(d) The applicant also may, at the discretion of the Regional Director, be required to furnish, or agree to furnish, the following additional material before Reclamation grants a right-of-use:

(1) A legal land description and/or a map or plat of the requested right-of-use. The description map or plat should relate to Reclamation's land boundaries.

(2) Detailed construction details, construction specifications, engineering drawings, power flow diagrams, one-line diagrams, and any other plans and specifications which may be applicable.

(3) Statements, reports, or other documents already prepared or which normally will be prepared by the applicant which may be used by Reclamation to satisfy the requirements of the National Environmental Policy Act (42 U.S.C. 4321 through 4347) or other legal requirements of Reclamation in granting the applications right-of-use request.

(4) An agreement to complete or assist in completing Reclamation's requirements towards compliance with cultural resource policies.

(e) The applicant shall pay any excess administrative costs which Reclamation incurs which are in excess to the initial deposit of \$200 required by paragraph (b) of this section prior to the issuance of the right-of-use. All billing for administrative costs shall be well documented by Reclamation.

(f) Prior to the issuance of the right-of-use instrument the applicant shall also pay Reclamation a fair market value of the right and privilege requested for the use of Reclamation's lands.

This value shall be determined by an appraisal made, as prescribed in § 429.3 of this regulation. Those applicants meeting the provisions of § 429.4 may be excepted from this provision. The decision to grant an exemption under § 429.4 will have the justification well documented.

(g) Information Collection: The information collection requirements contained in § 429.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, OMB 1006-003. The information is being collected to assist in the determination for the granting of a right-of-use. The information will be used to assure the appropriateness of such a grant and that the technical and financial resources of the applicant are sufficient to complete the project. Response is required to obtain the right-of-use.

[48 FR 56223, Dec. 20, 1983, as amended at 71 FR 19802, Apr. 17, 2006]

§ 429.7 Terms and conditions of and for the rights-of-use.

(a) The right-of-use granting document shall contain all special conditions or requirements which are determined by the Regional Director to be necessary to protect the interest of the United States.

(b) Any grant of a right-of-use for a term of 25 years or longer must have the consent of any involved water user organization pursuant to the legal requirements of 43 U.S.C. 387. Concurrence in and approval of uses for less than a 25-year period may be requested of the water users organization at the discretion of the responsible Regional Director. As a minimum, the water user's organization shall be notified of

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the right-of-use application prior to its being granted.

(c) Reclamation's land-use stipulation appearing in § 429.8 shall be included in all perpetual right-of-way easements granted, excepting grants to other Federal agencies.

(d) Temporary rights-of-use instruments shall contain a termination clause in the event the applicants use becomes, or may become, an interference with the Reclamation's use of the land.

(e) Except for grants of rights-of-use to Federal agencies, the use instruments shall contain a hold harmless clause found in § 429.9.

(f) The applicant must show that any legally required permits to construct power transmission lines in excess of 100 kilovolt have been secured by the applicant from the appropriate power marketing authority prior to Reclamation's granting a right-of-way for such line.

§ 429.8 Reclamation land-use stipulation.

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within 10 years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by recon-

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structing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

§ 429.9 Hold harmless clause.

(a) The following clause shall be a part of every land-use document issued by Reclamation:

The grantee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the grantee's activities under this agreement.

(b) To meet local and special conditions, the Regional Director, upon advice of the Solicitor, may modify this or any other provision of these rules with respect to the contents of the right-of-use instrument.

§ 429.10 Decisions and appeals.

(a) The Regional Director, acting as designee of the Commissioner, shall make the determinations required under these rules and regulations. A party directly affected by such determinations may appeal in writing to the Commissioner, Bureau of Reclamation, within 30 days of receipt of the Regional Director's determinations. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief memorandum to the Commissioner. The Regional Director's determinations will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

(b) Any party to a case adversely affected by final decision of the Commissioner of the Bureau of Reclamation, under this part, shall have a right of appeal to the Director, Office of Hearing and Appeals, Office of the Secretary, in accordance with the procedures in title 43 CFR part 4, subpart G.